

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications)	
Capability to All Americans in a Reasonable)	CC Docket No. 98-146
and Timely Fashion, and Possible Steps)	
to Accelerate Such Deployment)	
Pursuant to Section 706 of the)	
Telecommunications Act of 1996)	

**REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. ("Qwest"), by its attorneys, hereby files these Reply Comments in response to the Federal Communications Commission's ("Commission") *Third Notice of Inquiry* in the above-captioned proceeding.¹

I. QWEST'S COMMENTS

The Commission is committed to maximum reliance on free markets and private enterprise, competitive and technological neutrality, and dismantling the barriers to deployment of advanced and other services.² In its Comments, Qwest pointed out that adherence to these principles is even more critical in the current economy.

¹ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, *Third Notice of Inquiry*, FCC 01-223, rel. Aug. 10, 2001 ("Notice").

² *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report, 14 FCC Rcd. 2398, 2401-02 ¶ 5 (1999).

The earlier positive investment trends in advanced services are not continuing. Capital shortages are exerting enormous pressure on the expansion of Digital Subscriber Line (“DSL”) services. Recent reports indicate that the lead cable modem service has over DSL in subscribers is widening, not shrinking. That trend is predicted to continue for the foreseeable future.

Against this background, Qwest urged the Commission to focus its efforts under Section 706 on three areas:

- Refrain from mandating levels of deployment of advanced services, by including them in universal service or otherwise. Instead, encourage economic incentives such as investment tax credits or accelerated accounting to accelerate deployment.
- Eliminate the unjustifiable and counterproductive asymmetric regulatory treatment of cable modem services and DSL.
- Take aggressive action to curtail attempts by municipalities to impose additional layers of regulation and non-cost-based fees on facilities-based wireline providers, under the guise of management of public rights-of-way.

In these Reply Comments, Qwest addresses the state of competition between DSL and cable modem services discussed in the parties’ filings, and the conclusions that can be drawn from those comments.

II. PROMPT AND COMPLETE ELIMINATION OF THE GROSS DISPARITY OF REGULATION BETWEEN DSL AND CABLE MODEM SERVICES IS CRITICAL TO ACHIEVEMENT OF THE COMMISSION’S PROCOMPETITIVE OBJECTIVES AND THE REASONABLE DEPLOYMENT OF ADVANCED SERVICES

Comments filed by the parties to this proceeding support a finding that prompt and complete elimination of the gross disparity of regulation between DSL and cable modem services is necessary to adhere to the Commission’s stated objectives, and critical to the reasonable deployment of advanced services.

A. Cable Operators Have Taken Over The Market For Advanced Services

The evidence now shows that the Commission's prior finding that no single entrant dominates the advanced services market is no longer valid. Cable modem has emerged as the leading advanced services provider, aided by the great advantages conferred by unwarranted disparity of regulation.

Cable controls over 70% of the residential broadband market, and by all indications cable's share will continue to increase.³ Further, even in this plunging economy cable modem growth has bested DSL, as evidenced by data that cable modem additions dropped by 12.1% in the second quarter, compared to a 40% plummet in DSL additions.⁴

While winning the race to sign up subscribers is the ultimate proof of cable's triumph, the groundwork is nearly complete for cable to press its dominance even farther. According to the cable industry, it was the first mover in this advanced services market.⁵ Telephone companies, using DSL technology are the new entrants.⁶ Building on that head start, cable will continue its impressive path to control, by offering broadband service to 95,184,000 homes, or 90% of cable's potential subscriber base, by the beginning of 2003.⁷ NCTA states "If these estimates prove correct, the completion of cable industry's wiring of America for broadband Internet

³ See Industry Analysis Division, Common Carrier Bureau, High-Speed Services for Internet Access: Subscribership as of December 31, 2000, at Table 3 (Aug. 2001). See also Scott C. Cleland, How Broadband Deployment Skews Economic/Business Growth, Precursor Group, at 1 (Feb. 22, 2001), available at www.imapdata.com/n_studies/news/precursor.pdf.

⁴ SBC Communications Inc. ("SBC") at 5.

⁵ The National Cable & Telecommunications Association ("NCTA") at 6.

⁶ Verizon at 7.

⁷ NCTA at 8.

access is within sight.”⁸ Unfortunately, if the current trends continue unabated, advanced services provided by cable may be all that is available.

Cable has spent “tens of billions” to upgrade its plant to deliver broadband Internet access, as well as digital video programming and other interactive services.⁹ NCTA states that the cable industry “took the risk” to make the investment to meet the public’s demand for service.¹⁰ The cable industry could rationally decide to take that risk because its ability to compete and earn returns warranted by its investment were not, and are not now, obstructed by burdensome regulation. Statements by the largest cable multiple system operator confirmed the impact that burdensome regulation has on investment and deployment. According to C. Michael Armstrong, Chairman of AT&T Corp., “No company will invest billions of dollars . . . if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others.”¹¹

B. The Asymmetric Regulation Of DSL And Cable Modem
Has No Legitimate Basis, And Is Harming Competition

The weight of the comments filed in response to the *Notice* supports Qwest’s entreaty to the Commission to promptly end the unbalanced, counterproductive, and unsupportable disparity of regulation between DSL and cable modem services.

SBC notes, and Qwest concurs, that federal regulatory policy has proceeded in an *ad hoc*, piecemeal fashion, depriving the industry of the stability needed to encourage investment.¹²

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ C. Michael Armstrong, *Telecom and Cable TV: Shared Prospects of the Communications Future*, delivered to the Washington Metropolitan Cable Club (Nov. 2, 1998) at www.att.com/speeches/98/981102.maa.html.

¹² SBC at 6-8.

Contrary to Chairman Powell's insightful regulatory view that the Commission must work to harmonize regulatory treatment in a manner consistent with converged technology and markets, the rules that apply to the cable industry, incumbent local exchange carriers ("ILEC"), wireless and satellite companies are entirely different for each category of provider.¹³ SBC correctly characterizes the difference as an "illogical" disparity.¹⁴ The impact of this illogical disparity gives cable a significant advantage, drives costs and complexity for ILECs, and places a chill on ILEC investment, thereby advancing the already significant lead held by cable.

Similarly, Verizon points out that cable operators are the first entrants in the market for advanced services. They continue to enjoy an increasing share, and they will continue in that primary position in the future. Despite cable's ascendancy, the telephone companies' broadband services are highly regulated both at the wholesale and retail level, but cable operators are free from all regulation. They may offer their service to whomever they want, at whatever price they choose to charge. They believe that they are under no obligation to unbundle their Internet transport and provide it on an unbundled basis, and they recognize no requirement to share any of their broadband network facilities with competitors. Verizon concludes, and Qwest concurs, that "Because the Commission's disparate regulatory requirements increase the costs faced by telephone companies offering broadband services . . . the telephone companies' broadband services are necessarily less competitive than they otherwise would be against cable-delivered broadband access."¹⁵

BellSouth correctly points out that DSL and cable modem service possess significant economic similarities. Yet, contrary to the assumption that these similar market entrants would

¹³ *Id.* at 9.

¹⁴ *Id.* at 14.

¹⁵ Verizon at 13.

be allowed to compete on a level regulatory playing field, “the regulatory disparities are stark and overwhelming.”¹⁶ BellSouth states, and Qwest concurs, “To stimulate innovation and investment in advanced services infrastructure, as Congress prescribed, the Commission must eliminate artificial constraints on some competitors. This act would permit the developing marketplace to select the technologies and service providers that best meet consumer demand.”¹⁷

Commenters who, unlike telephone and cable companies, do not have as direct a stake in this debate, agree the existing disparity is harmful to competition and deployment and should be eliminated. Intel Corporation (“Intel”) states, for example, that “current regulation is unnecessarily undermining the reasonable and timely deployment of broadband.”¹⁸ Intel also notes that current regulations (that apply to telephone companies) are a “barrier to infrastructure investment.”¹⁹ Similarly, the Progress and Freedom Foundation (“PFF”) observes that “capital investment cannot be optimized when the benefits of investment flow to your competitors while the risks are solely yours.”²⁰

And just last week the Telecommunications Industry Association (“TIA”) urged the President to eliminate disparate regulation of broadband capability and to preempt unnecessary and artificial barriers through control of rights-of-way.²¹

¹⁶ BellSouth at 7.

¹⁷ *Id.* at 9.

¹⁸ Intel at 13.

¹⁹ *Id.* at 14.

²⁰ PFF at 22 and n.65 citing to Gupta, Grubman & Swenson, “The Battle for High-Speed Subscriber: Cable vs. DSL,” Salomon Smith Barney, dated Aug. 2001 at 3.

²¹ Letter from Matthew J. Flanigan, President, TIA, dated Oct. 4, 2001 (copy attached).

III. CONCLUSION

Contrary to the Commission's commitment to rely on market forces, to remain technology neutral, and to refrain from picking winners and losers in its quest to promote the deployment of advanced services under Section 706, the Commission has, without justification, regulated only one entrant -- telephone companies and their DSL service. Perversely, the predominant provider of advanced services, cable modem service, remains completely free from regulation. The Commission has instituted a regulatory scheme that pervasively regulates only one of the several available technologies. The Commission has significantly tipped the balance of competition, and created a deleterious effect on the deployment of advanced services. This illogical, unfair, disparate regulation is unproductive and anticompetitive, and should be eliminated as soon as possible.

Respectfully submitted,

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October 9, 2001



BUILDING GLOBAL COMMUNICATIONS

Matthew J. Flanigan
President
703/907-7701

October 4, 2001

The Honorable George W. Bush
The President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

The telecommunications industry wants to do its part in helping the United States recover from the tragic events of September 11th. Reflective of that commitment is the role that some of our companies already have played in rapidly restoring voice and data services in lower Manhattan, as well as in providing technical assistance to the U.S. Government in its national security-related investigation of these attacks. But, speaking on behalf of the over 1,000 members of the Telecommunications Industry Association, we want to do far more than that. We want to help our country recover its economic momentum and demonstrate to the world the enduring strength and resilience of the United States.

For us to effectively play our part in achieving that ambitious objective, we urgently need your leadership in establishing a vision and framework for transforming the nation's telecommunications network to full broadband capability. Ubiquitous broadband deployment would bring substantial improvements in education, healthcare and teleworking, as well as public safety and security, all critical to the future of our nation. Such capability will equip every American with the critical tools necessary to compete in the 21st century, tools that will make them far more productive and enhance their standard of living.

This is not just a matter of telecommunications policy but of fundamental economic policy. As you know, the Internet has had a major positive impact on the U.S. economy in the realm of productivity gains. Federal Reserve economists estimate that the Internet, and its associated information technology, has accounted for nearly two-thirds of the dramatic productivity growth experienced in the second half of the last decade. Businesses and consumers, however, have largely exploited if not exhausted the benefits of standard dial-up telephone connections that offer a connection to the Internet at speeds no greater than 56 kilobits per second. Experts believe that new tools that revolve around *fast, interactive, content-rich broadband services* are now needed to take our economy to the next level of growth and performance. Specifically, this means opening the 'last mile bottleneck' for all Americans in such a way that consumers are able to gain broadband access to the Internet at speeds of up to 100 megabits per second with a globally competitive rollout schedule.

Some analysts estimate that the benefits for economic growth of ubiquitous broadband deployment may reach \$500 billion per year. Investments in broadband made today to capture these benefits would have a direct and positive impact on the economy at a time when it is needed most. Unfortunately, however, broadband technologies are not being deployed in a timely manner in the U.S. By some estimates, current and next generation broadband capability will not be available nationally until the years 2010 and 2030 respectively. We simply must do better.

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Other nations are surpassing the United States by aggressively promoting broadband deployment through well-conceived national policies in an effort to capture the economic and social benefits of this new infrastructure. At the end of 2000, the United States ranked no better than third in the deployment of high-speed Internet access and is falling farther behind literally by the day. In Japan, next generation broadband capability will be deployed to every home and business by the year 2005. In South Korea, one carrier has connected more broadband subscribers in a week than any major American carrier has in a quarter. China has adopted a \$151 billion five-year investment plan for telecommunications focused on broadband. Canada, the Netherlands, and Sweden are also moving ahead with alacrity. Without an aggressive national policy and concerted effort, the United States could easily fall out of the 'Top 10' countries in terms of service coverage by the year 2005.

Mr. President, with your leadership and the support of the United States Congress, as a nation we can recover rapidly and resume a front-running role. We urge you to assign a member of your Cabinet with the responsibility of leading the development of a national broadband policy and implementation strategy. The overriding objective of this public-private partnership should be to ensure that all Americans have access to current high-speed Internet access technologies in the immediate future and to next generation broadband services by 2005.

Such a national broadband policy and strategy should include:

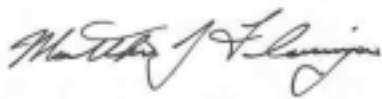
- Technology-neutral tax credits and other incentives for investments by all carriers that extend both current and next generation broadband services to residential subscribers;
- Timely allocation of sufficient and appropriate additional spectrum suitable for the provision of advanced wireless services, including third-generation systems;
- Modification of Federal Communications Commission ("FCC") regulations to relieve telecommunications service providers of the so-called federal and state "unbundling" obligations on *new broadband network components* in order to give them the necessary incentives to invest;
- Formalization of the current FCC policy of not regulating access to cable companies' high-speed networks;
- Revocation of regulations on integrated data, voice and video equipment that unnecessarily increase the costs of the associated network architectures and services;
- Telecommunications regulatory relief that takes into account operator commitments to broadband deployment schedules and coverage criteria;
- Removal and preemption of unnecessary and artificial barriers new entrants encounter as they seek access to local rights-of-way in order to deploy broadband technologies;

- Selective utilization of the federal government's preemption authority to streamline regulation in instances where a patchwork of state regulations impedes broadband deployment and promotes uncertainty; and
- Support and encouragement for local municipalities to deploy high-speed broadband networks throughout their communities in the form of loan guarantees and other financial incentives that would not overburden the national budget.

Mr. President, TIA is convinced that timely adoption of a national broadband deployment policy that includes the above principles would contribute significantly to an early return to strength of the national economy.

Thank you for the opportunity to present our views. Most importantly, as our nation continues to mourn the needless loss of innocent life in the terrorist attacks, we appreciate your unwavering leadership and commitment to demonstrating to the world that, while our hearts are heavy, the United States will emerge stronger than ever. Your commitment to meaningful economic stimulus initiatives promises to deliver rewards where it matters most, to the people of this great nation.

Sincerely,



Matthew J. Flanigan

cc:

The Honorable Richard Cheney, Vice President of the United States
The Honorable Andrew Card, White House Chief of Staff
The Honorable Karl Rove, Senior Advisor to the President
The Honorable Donald Evans, Secretary of Commerce
The Honorable Mitchell Daniels, Director, Office of Management & Budget
The Honorable Lawrence Lindsey, Assistant to the President & Director, National Economic Council
The Honorable Josh Bolton, Assistant to the President & Deputy Chief of Staff for Policy
The Honorable Dennis Hastert, Speaker of the House of Representatives
The Honorable Richard Gephardt, House Minority Leader
The Honorable Tom Daschle, Senate Majority Leader
The Honorable Trent Lott, Senate Minority Leader

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY**
COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. to be 1) filed
with the FCC via its Electronic Comment Filing System, 2) served as indicated below on the
parties marked with an asterik (*), and 3) served, via First Class United Mail, postage prepaid, on
all other parties listed on the attached service list.

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Richard Grozier

October 9, 2001

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